

## SECT. II.

## Negotiation of Bill.

1629. July 24.

LINDSAY *against* GRAY.

ONE being obliged to deliver to another a sum of money in London; and the party obliged, alleging, that he had sent a letter of exchange to his factor, resident at London, to do the same; this letter of exchange not being answered, neither yet protested against by the creditor; it was found did not liberate the debtor, but that nevertheless he ought to make payment to the creditor.

Clerk, *Gibson*.*Durie, p. 467.*

No 123.

1666. July 27.

E. NEWBURGH *against* STUART.

SIR WILLIAM STUART being creditor to the Earl of Newburgh, in a great sum, upon an indentment in the said Earl's lands: After his Majesty's Restoration, he was induced, (though there was no question as to the debt) to make a reference and submission to the Laird of Cochran and Sir John Fletcher; upon no other account, but that he apprehended that Newburgh might trouble him, and cause him be fined; which was the ordinary and ignoble practice of noblemen at that time against their creditors. These arbiters did take from the said Sir William, a discharge of the debt and renunciation of his right; and from Newburgh a blank bond as to the sum; and the said debt then amounting to 40,000 merks, they did give to the Earl of Newburgh the renunciation; and to Sir William, Newburgh's simple bond, filled up 6500 merks only: Newburgh pretending that Sir Alexander Durham (then Lord Lyon) was owing him money, did, by way of letter, give a precept to the Lord Lyon, in these terms: That he desired him to pay that sum to the bearer upon sight, and that he should retire his bond. This letter being presented to the Lyon, he, in a scornful and jeering way, subjoined to the letter, 'My Lord, I am your humble servant.' The Earl of Newburgh not satisfied to have paid Sir William in manner forefaid, as to 3400 merks, did intent a pursuit against Sir William, that he might be free of the residue, and get back his bond of 6500 merks, upon the pretence, that the said Sir William had got from him a bill of exchange, which had been accepted by the deceased Sir Alexander Durham; at the least, in case of not accepting, he should have protested and intimated to Newburgh, that it was not accepted nor satisfied, that he might have recourse against the said Sir Alexander, in his own time, whereof he is now prejudged.

No 124.  
Found, that precepts upon factors, and such like, granted to creditors for their further security, need not be presented, protested, or intimated; as bills of exchange among merchants.  
See No 131.  
p. 1553.